IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 274 OF 2001

1. Shri Antonio R. Borges,
son of Luis Borges,
House No.300, Deolai
Khandola, P.O. Marcel,
Goa 403 107,

2. Shri J. F. Rodrigues,
son of Aleixo Rodrigues,
Paroda Karali, P.O.
Quepem, Salcete, Goa,

3. Shri Francisco Mario
T. Vaz, son of Inacio
Caetano Vaz, House No.16,
Gandaulim, Colva,
Salcete, Goa, and

4. Shri Vishnu Bahadur,
son of Ram Dayal, House
No.7, Block No.3, Sea
View Co-operative
Society, Menezes
Braganza Bldg., Baina,
Goa 403 802. ...Petitioners.

Versus

1. Union of India, through
its Secretary, Ministry
of Surface Transport
(Shipping), 'Jahaz Bahwan',
SNT Union, New Delhi,

2. Director General of
Shipping, Mumbai, 8,
Walchand Hirachand Marg,
Mumbai, 400033,

3. Principal Officer,
Mercantile Marine
Department, Mumbai, 8,
Walchand Hirachand Marg,
Mumbai 400033,

4. Surveyor-in-Charge,
Mormugao Harbour, Vasco
Da Gama,

5. Shipping Master, Mormugao
Harbour, Vasco da Gama,

6. Director General of

Police, Government
of Goa, Panaji, Goa,

7. Police Officer/Officer
-in-charge, Harbour Police
Station, Mormugao Harbour,
Goa, and

8. M/s. Chowgule & Company
Ltd., Mormugao Harbour,
Goa. ...Respondents.

Shri J. Godinho, advocate for the petitioners.

Shri V. P. Thali, Senior Central Govt. Standing Counsel for respondents no. 1 to 5.

Ms. Winnie Coutinho, Government Advocate for respondents no.6 and 7.

Shri S. D. Lotlikar, Senior Advocate with Ms. Samant, advocate for respondent no.8.

CORAM: D. G. DESHPANDE &
P. V. HARDAS, JJ.

DATE OF RESERVING JUDGMENT: 27th January, 2003.

DATE OF PRONOUNCING JUDGMENT: 19th February, 2003.

JUDGMENT (Per D. G. Deshpande, J.)

Heard learned advocate for the petitioners and learned advocates for the respondents.

2. The petitioners, who are four in number, have challenged the Order dated 2nd May, 2001, issued by the Surveyor-in-Charge, Captain K.P Jayakumar, which had the effect of discharging the petitioners from their services. The Order was based on the provisions of the Merchant Shipping Act, 1958. The petitioners have also challenged the enquiry sought to be initiated against them pursuant to the letter dated lst August, 2001.

3. The facts giving rise to this petition are that all the petitioners have served the eight respondent for more than 20 years. Since 1980 they were the members of Jahazi Mazdoor Union, but they alongwith others became members of the Forward Seamen's Union of India. Intimation in this regard was given to respondent no.8 and respondent no.8 was also informed that it was not implementing the M/s. Kumud Bansal Award dated 17th April, 2000.

4. On 16th April, 2001, the petitioners alongwith others started peaceful agitation for non-payment of wages in accordance with the National Maritime Board Agreement or Home-Trade Agreement, whereupon the Master of the ship threatened them with dire consequences of loosing the job and, accordingly, at about 6.15 p.m. to 6.50 p.m., he came on board the vessel and forcibly lifted the petitioners from the board of the ship and brought them to the Harbour Police Station. Thereafter on 2nd May, 2001, the Shipping Master discharged all the petitioners. On 19th June, 2001, the General Manager of respondent no.8, called upon the petitioners to submit their explanation within four hours and to Show Cause why their names should not be cancelled from the Company's roster. The petitioner's gave reply on 27th June, 2001, denying the allegations made. they were also informed by letter dated lst August, 2001 that their

explanation was not satisfactory and that the enquiry would be held on 13th August, 2001. They did not take part in the enquiry and have filed this petition.

5. The petition was further amended and prayers for quashing and setting aside the enquiry proceedings and the Order passed by the Surveyor-in-Charge of respondent no.3, at Annexure 'J' and for restoration of the names of the petitioners in the roster of the Company were added.

6. We have heard the learned advocates for the petitioners and the respondents at length. The main thrust of the learned advocate for the petitioners was on the basis of Section 121 of the Merchant Shipping Act, 1958 (hereinafter referred to as "the Act of 1958"). That Section is as under:-

> **121. Discharge and leaving behind of seamen by masters of Indian ships. -**
>
> (1) The master of an Indian ship shall not -
>
> (a) Discharge a seaman before the expiration of the period for which he was engaged, unless the seaman consents to his discharge; or
>
> (b) except in circumstances beyond his control, leave a seaman or apprentice behind,
>
> without the authority of the office specified in this behalf by the Central Government and the officer aforesaid shall certify on the agreement with the crew that he has granted such authority, and also the reason for the seaman being discharged or the seaman or apprentice being left behind.

> (2) The officer aforesaid to whom application is made for authority in terms of sub-section (1) shall investigate the grounds on which the seaman is to be discharged or the seaman or apprentice left behind and may in his direction grant or refuse to grant such authority:
>
> Provided that he shall not refuse to grant his authority if he is satisfied that the seaman has without reasonable cause -
>
> (a) failed or refused to join his ship or to proceed to sea therein; or
>
> (b) been absent from his ship without leave, either at the commencement or during the progress of a voyage for a period of more than forty-eight hours.
>
> (3) The officer aforesaid shall keep a record of all seamen or apprentices discharged or left behind with his authority; and whenever any charge is made against a seaman or apprentice under section 191, the fact that no such authority is so recorded shall be **prima facie** evidence that it was not granted."

Consequently, the petitioners contended that the Master of a ship has no power to discharge or leave behind the seamen without the authority of the officers specified in this behalf by the Central Government and such an officer has to specify on the agreement with the crew, that he has been granted such authority and also the reasons for the seaman being discharged or being left behind.

7. According to the learned counsel for the petitioners, the petitioners were left behind first on 16th April, 2001, when the police physically removed them and brought them to the Harbour Police Station and

thereafter the Order of discharge dated 2nd May, 2000, came to be passed and, consequently, the said order is illegal as being not in conformity with the provisions of Section 121 of the Act of 1958.

8. The Order of discharge dated 2nd May, 2001, is filed in the petition at page 65. This Order states that four crew members, namely the petitioners, have refused to carry out the lawful command and attempted to stop the operation of the vessel, without any valid reason and, therefore, committed offences of disobedience of lawful command, secondly, they have committed repeated disobedience of lawful command and thirdly, combining with other crew, committed disobedience of lawful command and impeded operation of the vessel. It is also stated that there is breach on the part of the petitioners of the Agreement. The penalties, however, cannot be those stipulated in the Agreement. However, the Company was not desirous of enforcing the stipulated penalties of the Agreement, or the Act of 1958. Instead, the Company has desired the removal of the petitioners from the articles of the vessel. It is stated that the petitioners have not shown any interest to interact with the management of the vessel, despite various chances given to them, and, therefore, the Agreement was dissolved as it was no longer viable. Therefore, discharge of the petitioners was granted under Section 121 of the Act of 1958. The Order

also shows that the crew were to be paid all wages upto and including 2nd May, 2001. Learned counsel for the petitioners relied upon the following judgments in the case of **Chandra Kishore Jha** vs. **Mahavir Prasad & Ors.** [JT 1999 (7) SC 256], **Phalghat BPL & PSP Thozhilali Union** v**a. BPL India Ltd. & Anr.** [1995 (6) SCC 237], **The Siemens Engineering & Manufacturing Company of India Ltd.** vs. **The Union of India & Anr.** (AIR 1976 SC 1785), in support of his contention that if a statute provides that a particular procedure should be followed, then the same procedure has to be followed strictly. Since no dispute about this proposition was raised by the respondents, it is not necessary for us to refer to the said judgments relied upon the petitioners.

9. Regarding the merits and aforesaid contentions of the petitioners, the respondents no.1 to 5 in their affidavit have stated that on 16th April, 2001, the petitioners went on strike without any notice and disrupted the activity of the vessel and it was only four petitioners who went on strike on 16th April, 2001 and brought the operations of the vessel to a halt. The petitioners disobeyed the lawful command of the Master of the vessel and physically prevented the crew, including the Company and the Master to anchor the vessel, threatening violence. The petitioner no.3 aforesaid, shut off the power inspite of the Chief Engineer of the vessel

telling him not to touch the switch and due to this, operation of the vessel had to be stopped and the pilot disembarked from the vessel.

10. According to the respondents, this happened in the morning, but repeatedly a number of chances were given to the petitioners to resume work. The log book entries were made in this regard. However, the petitioners refused to subject themselves to the command and therefore they were required to be physically lifted and taken to the Police Station.

11. Learned counsel for the petitioners therefore contended that in this background of the matter it cannot be said that the petitioners were left behind on 16th April, 2001, because after 16th April, 2001, the vessel did not leave the port. It was very much stationed in the same port and by no stretch of imagination removing the petitioners from the ship to the Police Station to avert or avoid further serious problems would amount to leaving behind the petitioners, nor could it amount to giving them discharge on 16th April, 2001.

12. So far as the discharge of the petitioners is concerned, according to the respondents, they have been discharged by following the requirements of Section 121 of the Act of 1958, because the officer, namely the

Surveyor-in-Charge, had the authority to act under Section 121 of the Act of 1958 and had certified so and had given reasons for the discharge of the petitioners.

13. The grievance of the petitioners in this regard is to be found in para 22 of the petition, wherein the petitioners have stated as under:-

> "22. The Petitioners state that the Petitioners were taken to the police station illegally and unlawfully although under the provisions of the Merchant Shipping Act police cannot take the serving seamen from the vessel until the competent authority i.e. Shipping master after enquiry and extension of natural justice declares the seaman qualified to be discharged and the discharged seamen do not leave the vessel."

14. The question is whether taking the petitioners from the vessel to the Police Station amounts to leaving them behind or their discharge and in the background which is alleged by the petitioners and the counter by the respondents, it cannot be said that taking away of the petitioners from the vessel to the Police Station amounted to leaving them behind or their discharge. The petitioners were taken to the Police Station only to avoid further serious consequences and loss to the vessel. It was a temporary method of controlling the activities of the petitioners who, inspite of repeated warnings and entries in the log book, were not subjecting themselves to the command of the Master of the

vessel.

15. Therefore, there is no merit in the contention of the petitioners that taking them to the Police Station on 16th April, 2001, amounted to leaving them behind or amounted to their discharge. The Order of discharge is passed under Section 121 of the Act of 1958.

16. Thereafter the petitioners were called upon by letter dated 19th June, 2001 to submit their explanations in writing within 48 hours and to show cause why their names should not be cancelled from the Company's roster. A warning was also given to them that if they do not furnish any explanation, it would be presumed that they have no explanation to offer. Annexure 'P' at page 77, is the copy of the said letter. On 27th June, 2001, the petitioners sent their letters-cum-replies to the effect that the letter dated 19th June, 2001 was misconceived, bad in law and not maintainable. An enquiry was, thereafter, conducted, liberty was given to the petitioners to take part in the enquiry and to cross-examine the witnesses. However, it is clear that the petitioners did not take part in the enquiry, did not cross-examine the witnesses and the charges were found to be proved. Ultimately, Orders striking off the names of the petitioners from the Company's roster were passed, which are at Annexure 'X' colly., at pages 90 I to P of

the petition.

17. Regarding these Orders at Annexure 'X' colly. dated 5th January, 2002, the learned counsel for the respondents contended that defence assistant was provided to the petitioners. One of the petitioners, Shri A. Borges, was present in the enquiry with his defence assistant, but when the charges were explained to them, Shri Borges, petitioner no.1, remained mum and silent and the defence assistant advised the Enquiry Officer that the petitioners were not accepting the charges. When asked about any defence witnesses to disprove the charges, the defence assistant said that he had nothing to say. Then witnesses were presented and examined and similarly other witnesses were also not cross-examined. Thereafter, on ? 22nd September, 2001 and 23rd September, 2001, neither the delinquent employees i.e. the petitioners, nor their defence assistant attended the proceedings and hence the proceedings were conducted ex parte and eight other witnesses were interrogated ex parte. After making analysis and assessment of the evidence, the charges were found to be proved against the petitioners.

18. In the petition it is tried to be contended that the petitioners were not permitted to be represented by an advocate, but they were permitted to be defended by a co-worker and Shri A. K. Raizada, who was the legal

assistant and had no legal background. It is clear that the stand taken by the petitioners now is neither correct, nor true. The enquiry report is absolutely clear and it shows that eventhough sufficient opportunity was given to the petitioners, they did not take part in the enquiry, they did not cross-examine the witnesses, nor examined any witnesses in support of their contention that they were only peacefully agitating on 16th April, 2001 on board the vessel. In fact, the petitioners were also given opportunity to explain why a particular punishment should not be awarded to them, but even in that regard the ground raised in the petition is that deboarding of the petitioners on 16th April, 2001, was illegal and, therefore, all the subsequent enquiries held are contrary to Section 212 of the Act of 1958. We are not at all in agreement with the objections raised and submissions made by the learned counsel for the petitioners.

19. The next point that was raised by the petitioners is that the enquiry conducted against the petitioners was without jurisdiction and against the provisions of the Act of 1958 and the Rules framed thereunder. It is pertinent to note that eventhough this ground was included in the petition by way of amendment, no specific provision of the Act of 1958 or the Rules is quoted in support thereof as to how it is without jurisdiction. However, Section 95 (3) of the Act of 1958,

was shown to us which gives powers to the Central Government to make Rules. Sub-section (3) of Section 95 reads as under:-

> "(3) The Central Government may make rules for the purpose of enabling seamen's employment offices effectively to exercise their powers under this Act; and in particular and, without prejudice to the generality of such power, such rules may provide for -
>
> (a) consultation with respect to any specified matter by seamen's employment offices with such advisory boards or other authorities as the Central Government may think fit to constitute or specify in this behalf;
>
> (b) the levy and collection of such fees as may be specified for any seamen's employment office for registering the name of any seaman in any register maintained by it;
>
> (c) the issue of directions by the Central Government to any seamen's employment office with reference to the exercise of any of its powers;
>
> (d) the supersession of any seamen's employment office which fails to comply with any such direction."

20. Accordingly, the Rules were framed in 1986 and they are called Merchant Shipping (Seamen's Employment Office) Rules, 1986. Under Rule 45 the powers have been given to the Director, who is appointed under Section 12 of the Act of 1958, and, therefore, it was contended by the learned counsel for the petitioners that respondent

no.8 had no power to take any decision and, therefore, the Order subsequent to the enquiry is illegal and without any basis. It was also contended that alternatively, looking to the long service record of the petitioners and the fact that there was nothing adverse against them during that period, the punishment imposed is harsh. As against this, it was contended by the learned counsel for respondent no.8, Shri Lotlikar, that by Notification dated 27th March, 2001, the powers of the Director have been given to the Shipping Company and, consequently, there is no substance in the objection raised by the petitioners that the Order could not have been passed by the Shipping Company. He tendered a copy of the said Notification for our perusal. We have taken it on record. Item No.7(c) provides as follows:-

> "7(c): The Shipping Companies shall themselves enforce the provisions of all the Rules referred to in paragraph 7(b) above in respect of the seamen on their company roster. There shall be no need to refer them to either any Disciplinary Sub-Committee or to the Director, Seamen's Employment Office. Cases existing at present in office of any Director, SEO shall also be referred back to the concerned Shipping Company for final disposal."

Learned counsel for the petitioners could not point out anything as to how this Circular is not applicable in the instant case. In view of this fact and in view of this clear provision in the Notification where powers are given to the companies regarding Disciplinary Committee, we do

not find any force in the submissions of the petitions that the ultimate Order in the enquiry passed by the Shipping Company, respondent no.8, suffers from any jurisdictional error. There is, therefore, no merit in this petition.

21. Lastly it was contended by the learned counsel for the petitioners that looking to the period of service rendered by the petitioners to the Company, the punishment is harsh, but in that regard this Court cannot interfere, because the punishment was awarded after considering serious allegations against the petitioners and their refusal to take part in the proceedings.

22. Therefore we pass the following Order:-

The petition is dismissed. Rule discharged.

D. G. DESHPANDE,J.

P. V.HARDAS, J.

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